

MEMORANDUM OF UNDERSTANDING
RELATING TO
THE ARCO SANTA CLARA RIVER OIL SPILL
BETWEEN THE
DEPARTMENT OF FISH AND GAME,
OFFICE OF OIL SPILL PREVENTION AND RESPONSE,
AND
THE U.S. DEPARTMENT OF INTERIOR,
Represented by the U.S. FISH & WILDLIFE SERVICE

I. INTRODUCTION

This Memorandum of Understanding ("MOU"), is between the U.S. Department of the Interior represented by the U.S. Fish & Wildlife Service ("USFWS"), and the California Department of Fish & Game ("CDFG") (hereafter the CDFG and the USFWS may sometimes be referred to individually as "Trustee" and are collectively referred to as the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured as a result of the releases of oil from the ARCO Pipe Line Company ("APL") (formerly ARCO Four Corners Pipe Line Co.) pipeline (Line # 1) in and around Los Angeles County, California, on January 17, 1994, during the Northridge Earthquake and the earthquake-related January 22, 1994 discharge of oil from APL Line # 63 in Grasshopper Canyon California. The largest of these oil releases occurred at APL's Newhall Pump Station and entered the Santa Clara River.

II. PARTIES

The following officials, or their designees, are parties to this MOU and act on behalf of the public as Trustees for Natural Resources under this MOU:

- Regional Director
United States Fish & Wildlife Service
Region 1
(on behalf of the Secretary of the United States Department of the Interior)
- Administrator
California Department of Fish and Game
Office of Oil Spill Prevention and Response

III. AUTHORITY

The Trustees enter into this MOU pursuant to the Natural Resources Trustee authorities provided to the Trustees by: the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq.; the Water Pollution Prevention and Control Act, 33 U.S.C. §§ 1251 et seq.; the National Oil and Hazardous Substances Pollution Contingency Plan, Subpart G, 40 C.F.R. §§ 300.600 et seq.; Executive Order 12580, 3 C.F.R., 1987 Comp., p. 193, 52 Fed.Reg. 2923 (January 23, 1987), as amended by Executive Order 12777, 56 Fed.Reg. 54757 (October 19, 1991) and Executive Order 13016, 61 Fed.Reg. 45871 (August 30, 1996); the Oil Pollution Act Damage Assessment Regulations, 15 C.F.R. §§ 990 et seq.; the DOI's Natural Resources Damage Assessment Regulations, as amended, 43 C.F.R. §§ 11 et seq., as applicable; and any other applicable law. The State

Trustee also enters into this MOU pursuant to its Natural Resource trustee authority under Fish and Game Code § 1802; and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code §§ 8670.1 et seq.

IV. DEFINITIONS

Whenever the following terms are used in this MOU, they shall have the following meanings:

A. Natural Resource and Natural Resources

"Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State of California, and the "services" that the resources provide to other natural resources and/or humans.

B. Oil Spills or the Santa Clara River Oil Spill

"Oil Spills" mean the releases of oil from APL pipeline (Line # 1) in and around Los Angeles County, California, on January 17, 1994, during the Northridge Earthquake and the earthquake-related January 22, 1994 discharge of oil from APL Line # 63 in Grasshopper Canyon, California. The "Santa Clara River Oil Spill" means the largest of these oil spills which occurred at APL's Newhall Pump Station and entered the Santa Clara River.

C. Restoration/Restore

"Restoration"/"Restore." "Restoration" means any action which restores, replaces, rehabilitates, and/or acquires the equivalent of – and "Restore" means to restore, replace, rehabilitate and/or acquire the equivalent of – the Natural Resources and the "services" (as that term is defined at 15 C.F.R. § 990.30 and 43 C.F.R. § 11.14 (nn), as applicable) provided by the Natural Resources that were injured, lost, or destroyed by the Oil Spills.

V. THE SETTLEMENT OF THE OIL SPILLS, INCLUDING THE SANTA CLARA RIVER OIL SPILL

A settlement of the Oil Spills has been reached with APL in lieu of litigation and has been embodied in a proposed Consent Decree. Upon approval by the District Court, the attached Consent Decree will require the defendant to pay the sum of \$7,100,000.00 plus interest to be dedicated to restoring natural resources. This amount includes \$250,000 plus interest to cover oversight and monitoring costs incurred by the DOI, USFWS or its designee. Additionally, the attached Consent Decree will require the defendant to pay the sum of \$250,000 plus interest to the OSPR or its designee for oversight and monitoring.

Pursuant to the Consent Decree, \$7,100,000 plus interest will be maintained in a segregated account within the DOI's Natural Resource Damage Assessment and Restoration Fund (the "Santa Clara Account"). The CDFG and USFWS, as co-equal joint Trustees, commit to the expenditure of the funds set forth in this paragraph, for the design, implementation, permitting, as necessary, and monitoring and oversight of Restoration projects in and along the Santa Clara River. The Trustees shall use said funds for habitat improvements, revegetation, and/or protection of areas within the Santa Clara River watershed ("Habitat Restoration

Projects"), and wildlife projects which will benefit the least Bell's vireo and/or other threatened or endangered species or species of special concern in and along the Santa Clara River ("Wildlife Projects").

The Trustees shall prepare a Restoration Plan proposal containing details for specific projects. The final Restoration Plan will be developed and implemented after providing public notice, opportunity for a hearing, and consideration of all public comment. The Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource damages in accordance with the provisions of the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., other relevant Federal or State law, and the regulations governing use of recoveries for Natural Resource damages.

VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees in the use of the proceeds from the Oil Spills settlement for habitat restoration and protection, and wildlife projects which will benefit threatened or endangered species or species of special concern in and along the Santa Clara River, such as the least Bell's vireo.

VII. ORGANIZATION - NATURAL RESOURCES TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created a Natural Resources Trustee Council ("NRT Council") to which each of the Trustees will designate two primary representatives and at least two alternate representatives. Each party to this MOU shall have two votes that shall be cast by the parties' primary representatives, or in the absence of one or both of the primary representatives, by their respective alternate representative.

Within twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, telephone numbers, and facsimile numbers of that Trustee's primary and alternative representatives and designated legal counsel to the NRT Council. Communications regarding NRT Council business shall be addressed to the primary representatives and, unless the NRT Council directs otherwise, copied to the alternate representatives.

Designated representatives of the DOI's Office of the Solicitor and the legal advisor of the OSPR shall serve as legal counsel to the NRT Council. The NRT Council will also seek advisory participation of other Federal or State agencies, including the California Attorney General's Office, the United States Department of Justice, the DOI's Office of Environmental Policy and Compliance or any other agency as deemed appropriate by the NRT Council.

VIII. DECISION-MAKING

The Trustees agree that, except as specifically delegated to a specific Trustee pursuant to Section IX below, decisions implementing this MOU, the Settlement Agreement, and the Consent Decree shall require the unanimous approval of the voting NRT Council members. Decisions shall be recorded in writing, either by resolution signed by the parties, or in minutes approved as to content and form by the parties.

In the event that unanimous agreement cannot be reached among the NRT Council members, the matter in dispute will be elevated within the Trustee agencies for resolution. If necessary, the Trustees may establish further mechanisms to resolve disputes. The Trustees

agree that decision-making deliberations will focus on the Trustee's mutual purposes of Restoring injured Natural Resources and lost services rather than on individual Trustee control or trusteeship over those resources.

IX. POWERS, DUTIES, AND RESPONSIBILITIES

A. Natural Resources Trustee Council

On behalf of the Trustees, the NRT Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VIII above. The NRT Council may take whatever actions the NRT Council, in its discretion, determines are necessary to fulfill the Trust responsibilities of each Trustee under, and to effectuate the purposes of, the Consent Decree and applicable Federal and State law. Any Trustee representative on the NRT Council may convene a meeting of the full NRT Council. It is expected that the NRT Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' Natural Resources Trustee responsibilities:

1. Oversee the development and implementation of the plan for Habitat Restoration Projects and Wildlife Projects. If such plan includes acquisition, ensure that such acquisition includes any improvements of habitat on these sites necessary to achieve total replacement of natural resources lost as a result of the Oil Spills;
2. Arrange for the letting of contracts that the NRT Council determines are necessary, with professional consultant(s) or contractor(s), technical or otherwise, best qualified to provide services to the NRT Council;
3. Make or oversee all necessary decisions for the management and administration of monies received in the settlement for the purpose of implementing the Habitat Restoration Projects and Wildlife Projects, including oversight and monitoring;
4. Direct the Lead Trustee for the Habitat Restoration and Wildlife Projects, as set forth below in Subsection B, to approve disbursements from the Santa Clara Account for project costs, and to take all steps necessary to affect the disbursements when so directed by the Trustee Council;
5. Select other Restoration projects (1) if the Habitat Restoration Projects and/or the Wildlife Projects described in the final Restoration Plan prove infeasible, impractical, or otherwise not in the public interest, or (2) if any funds remain after the successful implementation of the projects described in the final Restoration Plan, provided that such other projects address and have a reasonable geographic and Natural Resource nexus to the injuries caused by the Oil Spills or otherwise meets the requirements of applicable Federal and State law;
6. Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Trustee for specific projects.

B. Lead Trustee for the Habitat Restoration and Wildlife Projects

The Lead Trustee for the Habitat Restoration and Wildlife Projects shall be a NRT Council primary representative for the USFWS or that representative's designee. The Lead Trustee for the Habitat Restoration and Wildlife Projects shall:

1. Ensure that the \$6,850,000 allocated toward these projects along with the \$250,000 for oversight and monitoring, plus interest thereon, is placed in the Santa Clara Account¹;
2. Ensure that the Habitat Restoration Projects and Wildlife Projects or any other use of funds segregated for these projects, comply with all applicable laws, including the National Environmental Policy Act ("NEPA"), 42 U.S.C.A. §§ 4321 et seq., the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., the Coastal Zone Management Act ("CZMA") 16 U.S.C. § 1451 et seq., and the California Environmental Quality Act ("CEQA"), Pub. Resources Code §§ 21000 et seq.
3. Provide for the NRT Council's approval a detailed statement of the proposed projects, project schedules, estimated budgets for the life of the projects, including an estimate of any contract, administrative, or overhead costs to be charged to the projects by USFWS or the DOI;
4. Obtain the NRT Council's authorization to commence the Habitat Restoration Projects and Wildlife Projects;
5. Disburse funds from the Santa Clara Account to pay costs incurred in connection with the Habitat Restoration Projects and Wildlife Projects;
6. Oversee, coordinate, and monitor the progress of the Habitat Restoration Projects and Wildlife Projects;
7. Submit quarterly reports to the NRT Council which shall include a progress report and an estimate of funds spent;
8. Establish and maintain records and relevant documents regarding the Habitat Restoration Projects and Wildlife Projects;
9. Schedule meetings and prepare an agenda for the NRT Council meetings regarding the Habitat Restoration Projects and Wildlife Projects;
10. Inform the other Trustees of all pertinent developments regarding the projects on a timely basis; and
11. Carry out such other duties as directed by the NRT Council.

¹ An additional \$250,000 shall be paid directly to the Department of Fish and Game, Office of Oil Spill Prevention and Response (OSPR) for use by the OSPR or its designee for oversight and monitoring.

C. Lead Administrative Trustee

The Lead Administrative Trustee shall be a NRT Council primary representative of the USFWS or that representative's designee. The duties of the Lead Administrative Trustee shall include, but are not limited to:

1. Coordinating and monitoring all aspects of the Natural Resource Restoration process not specifically addressed above;
2. Scheduling meetings and preparing an agenda for the NRT Council general meetings;
3. Acting as a central contact point for the NRT Council;
4. Establishing and maintaining records and relevant documents other than those regarding specific Restoration projects;
5. Carrying out such other duties as directed by the NRT Council; and
6. The Lead Administrative Trustee may delegate any of its duties to another Trustee with the concurrence of the NRT Council.

X. **CONFIDENTIALITY**

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to Natural Resources caused by the Oil Spills be made public. Therefore, such data shall be made public if publication will not prejudice assessment or recovery efforts in this or other legal actions. Wherever possible, public sharing of scientific data will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, or protected by other applicable privileges (or a combination thereof) ("Privileged Communications") will be protected from disclosure to the maximum extent possible under applicable Federal and State law.

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to which any privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining a Trustee or the NRT Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the NRT Council to release any record.

XI. **RESERVATION OF RIGHTS**

Nothing in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over Natural Resources.

XII. **LIMITATION**

Nothing in this MOU shall be construed as obligating the United States, the State of California or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XIII. THIRD-PARTY CHALLENGES OR APPEALS

Nothing in this MOU may be the basis of any third-party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

XIV. MODIFICATION OF AGREEMENT

Modification of this MOU must be in writing and approved by both Trustees currently a party to this MOU.

XV. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. If at any time the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event either Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other party to this MOU at least thirty (30) days in advance of the withdrawal.

In the event of the withdrawal of either Trustee and the termination of this MOU, the Trustees shall give a full and complete accounting to the NRT Council of all restoration funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by a Trustee in any joint or separate account as a result of the Oil Spills, pursuant to the Consent Decree or this MOU.

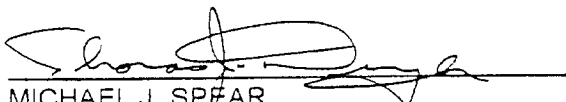
XVI. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Trustee. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

SIGNATURES:

Dated: _____, 1997

UNITED STATES FISH AND WILDLIFE SERVICE

By: 
for MICHAEL J. SPEAR
Regional Director
Region One

Dated: _____, 1997

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

PETE BONTADELLI

Administrator

Office of Oil Spill Prevention and Response